

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PHASE II CHIN, LLC, et al.,

2:08-CV-162 JCM (GWF)

Plaintiffs,

v.

FORUM SHOPS, LLC, et al.,

Defendants.

ORDER

Presently before the court is Forum defendants' motion for leave to file a second amended counterclaim (Doc. #134), filed on September 14, 2009. Plaintiffs filed their original complaint in this case in state court in January 2008. The case was removed to this court on February 7, 2008. (Doc. #1.) Defendants filed their answer and one counterclaim on April 1, 2009. (Doc. #106). Plaintiffs filed an answer to defendants' counterclaim on April 16, 2009. (Doc. #110). In their first motion to amend (Doc. #129), filed on June 16, 2009, defendants sought to add the following causes of action: 1) breach of contract; 2) fraud; and 3) conspiracy. Defendants now seek a subsequent opportunity to amend their complaint to include an additional breach of contract claim. (Doc. #134). To date, plaintiffs have not filed an opposition.

After a responsive pleading has been filed, a party may amend its pleading "only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Rule 15 instructs that courts "should freely give leave when justice so requires."

Here, justice requires this court to permit the requested amendment. The addition of the new cause of action will enhance the efficiency of this judicial proceeding and allow the court to make

1 a proper determination on the merits. Because the discovery cut-off date is not until January 13,
2 2009 and there is no pending trial date (Doc. #132), this ruling will not substantially prejudice the
3 plaintiffs.

4 Accordingly,

5 IT IS HEREBY ORDERED that defendants' second motion to amend counterclaim (Doc.
6 #134) be, and the same hereby is, **GRANTED**.

7 IT IS FURTHER ORDERED that defendants shall have **ten (10) days** from the date of this
8 order to file and serve their amended counterclaim.

9 DATED this 23rd day of October, 2009.

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12 UNITED STATES DISTRICT JUDGE